

ORDINANCE NO. 877-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA ADDING
CHAPTER 19, "ACQUISITION AND USE OF MILITARY EQUIPMENT" OF TITLE 4
"PUBLIC SAFETY" OF THE PACIFICA MUNICIPAL CODE**

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body prior to taking certain actions relating to the funding, acquisition, solicitation, or use of military equipment; and

WHEREAS, Assembly Bill 481, requires that the approval by the governing body be by an ordinance adopting a military equipment use policy, at a regular meeting held pursuant to open meeting laws; and

WHEREAS, Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations with respect to a military equipment use policy; and

WHEREAS, a draft of the Pacifica Police Department Policy 705 "Military Equipment" was published on the Department's internet website, and provided to the City Council at least 30 days prior to public hearing in accordance with requirements of Government Code section 7071; and

WHEREAS, the Pacifica Police Department's Lexipol Policy 705 "Military Equipment" meets the requirements of California Government Code section 7070, subdivision (d); and

WHEREAS, the military equipment identified in Policy 705 "Military Equipment" is necessary, because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety; and

WHEREAS, Policy 705 "Military Equipment" will safeguard the public's welfare, safety, civil rights, and civil liberties; and

WHEREAS, the military equipment identified in Policy 705 "Military Equipment" is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and

WHEREAS, no prior military use policy has existed in the City of Pacifica that was applicable to the use of military equipment, and the adoption of such policy shall serve to secure future compliance;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFICA DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Policy Approved and Adopted. Pacifica Police Department's Lexipol Policy 705 "Military Equipment" is hereby approved and adopted as set forth in Exhibit A attached hereto.

Section 4. The City Council finds that this ordinance and the City of Pacifica Police Department's Lexipol Policy 705 are exempt from the provisions of the California Environmental Quality Act ("CEQA") because they will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as defined in Section 15378 of the CEQA Guidelines.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 6. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State Law.

Section 7. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its adoption and shall be published and posted as required by law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 25th day of April 2022, by the following vote:

AYES, Councilmembers: Bier, Bigstycck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a

ABSENT, Councilmembers: Beckmeyer.

ABSTAIN, Councilmembers: n/a



Mary Bier (May 20, 2022 11:25 PDT)

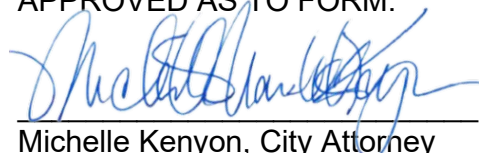
Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

Policy 705

Pacifica Police Department
Pacifica PD Policy Manual

Military Equipment

705.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

The Pacifica Police Department does not possess any tactical equipment that it has obtained from the military, nor does it possess any equipment that was specifically designed for military use. The Pacifica Police Department also has not acquired any equipment through military surplus programs such as the 1033 Program (10 USC 2576a).

705.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.

- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

705.2 POLICY

It is the policy of the Pacifica Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. All members of the Pacifica Police Department will comply with this policy.

705.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Pacifica Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

705.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

- 1. Less Lethal Shotgun:** Less Lethal Shotgun is used to deploy the less lethal 12-gauge Super-Sock Beanbag Round.
 - a. Description, quantity, capabilities, and purchase cost
 - i. MOSSBERG 590 TACTICAL LESS LETHAL SHOTGUN, cost: approximately \$530 each, quantity:11. The Mossberg 590 Tactical Less Lethal Shotgun is used to deploy the less lethal 12-gauge Super-Sock Beanbag Round up to a

distance of 75 feet. The dedicated 12-gauge shotgun is distinguishable by an orange butt stock and fore grip. The range of the weapon system helps to maintain space between officers and a threat reducing the immediacy of the threat which is a principle of de-escalation.

- ii. 12-GAUGE SUPER-SOCK BEANBAG ROUND, cost: approximately \$6.45, quantity: 80. A less lethal 2.4-inch 12-gauge shotgun round firing a ballistic fiber bag filled with 40 grams of shot at a velocity of 270 feet per second (FPS). CTS Super-Sock rounds are discharged from a dedicated 12-gauge shotgun that is distinguishable by an orange butt stock and fore grip. This round provides accurate and effective performance when fired from the approximate optimal ranges between 5 and 20 yards. The maximum effective range of this munition is up to approximately 75 feet from the target. The Super-Sock is in its deployed state immediately upon exiting the barrel. It does not require a minimum range to “unfold” or “stabilize.” The Super-Sock is an aerodynamic/projectile. However, accuracy is relative to the shotgun, barrel length, environmental conditions, and the operator. The Super-Sock is accurate, however, effectiveness depends on many variables, such as distance, clothing, stature, and the point where the projectile impacts.

b. Purpose

To limit the escalation of conflict where employment of lethal force is undesirable.

c. Authorized Use

Situations for use of the less lethal weapon systems may include, but are not limited to:

- i. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- ii. The suspect has made credible threats to harm him/herself or others.
- iii. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- iv. There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.
- v. Training exercises or approved demonstrations.

d. Lifespan

Mossberg 590 Tactical Less Lethal Shotgun- approximately 15-20 years.
Super Sock Round- No listed expiration date.

e. Fiscal Impact of Maintenance

Costs of procurement are listed above. Annual cost of ongoing maintenance is estimated to be approximately \$500.

f. Training

Prior to use of the 12 gauge less lethal shotgun, personnel shall attend a 2 hour course instructed by POST certified instructors, followed by proficiency qualification. Personnel will complete annual qualification demonstrating proficient use of the weapon and policy knowledge.

g. Legal and Procedural Rules

Use is governed under Lexipol Policy 303.9. It is the policy of the Pacifica Police Department to utilize the less lethal shotgun only for official law enforcement purposes, and pursuant to State and Federal law, including those regarding the use of force.

2. Pepperball Launcher: A device that discharges irritant projectiles.

a. Description, quantity, capabilities, and purchase cost

i. Pepperball FTC LAUNCHER, cost: approximately \$591 each, quantity: 2.

The FTC Launcher is a compressed-air powered launcher designed to fire non-lethal Pepperball projectiles. The FTC Launcher features a hopper that can hold up to 180 rounds, a flexible air source configuration and a compact modular design.

ii. Pepperball LIVE PROJECTILE, cost: approximately \$2.78 per projectile, quantity: 90. The basic Pepperball projectile contains PAVA pepper powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a Pepperball Launcher, the projectile has a velocity of 280-350 FPS. The projectile has a direct impact of 30ft and an area of saturation of 150+ft. The projectile contains 0.5% PAVA Powder.

iii. Pepperball LIVE-X PROJECTILE, cost: approximately \$3.58 per projectile, quantity: 90. The Live Projectile contains a concentrated amount of PAVA pepper powder. One round of LIVE-X contains the equivalent PAVA irritant chemical agent in 10 Pepperball LIVE rounds. Discharged from a Pepperball launcher, the projectile has a velocity of 280-350 FPS. The projectile has a direct impact of 60ft and an area of saturation of 150+ft. The projectile contains 5% PAVA Powder.

b. Purpose

To limit the escalation of conflict where employment of lethal force is undesirable. Situations for use of the less lethal weapon systems may include but, are not limited to:

- i. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- ii. The suspect has made credible threats to harm him/herself or others.
- iii. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- iv. There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.
- v. Training exercises or approved demonstrations.

c. Authorized Use

Only those officers who have been trained in the use of Pepperball launchers are authorized to use the Pepperball launchers.

d. Training

Prior to use of the Pepperball launcher and projectiles, personnel will complete a 2 hour course instructed by vendor trained instructors, followed by proficiency qualification. Personnel will complete annual qualification demonstrating proficient use of the Pepperball launcher and policy knowledge.

e. Lifespan

- i. Pepperball FTC Launcher- approximately 10 years
- ii. Pepperball Live Projectile- approximately 3 years
- iii. Pepperball Live-X Projectile- approximately 3 years

f. Fiscal impact of Maintenance Costs

Annual and ongoing maintenance cost estimated to be \$500.

g. Legal and Procedural Rules

Use is established under Lexipol 303.7.2. It is the policy of the PPD to utilize Pepperball only for official law enforcement purposes, and pursuant to State and Federal law, including those regarding the use of force.

3. Rifles: Guns that are fired from shoulder level, having a long spirally grooved barrel intended to make bullets spin and thereby have greater accuracy over a long distance.

a. Description, quantity, capabilities, and purchase cost

- i. SMITH & WESSON M&P15 SPTII PATROL RIFLE 16", cost: approximately \$607.18, quantity: 16. A rifle that fires an intermediate-power cartridge (.223) which is more powerful than a standard pistol. It is a short-barreled rifle which allows a trained officer better control inside of structures with greater accuracy than a handgun, and long range accuracy. Built to perform multiple uses under various conditions, M&P15 rifles are as versatile as they are reliable. M&P15 rifles are lightweight and rugged embodying the best combination of function and form.
- ii. Colt M4 Commando Semi-Auto Rifle 11.5", cost: approximately \$1,199.00, quantity: 3. A rifle that fires an intermediate-power cartridge (.223) which is more powerful than a standard pistol. It is a short-barreled rifle which allows a trained officer better control inside of structures with greater accuracy, rapid response, maneuverability and enhanced firepower in critical situations.
- iii. WINCHESTER RANGER .223 55GR BALLISTIC SILVERTIP RIFLE ROUND, cost: approximately \$987.00 per case of 1000 rounds, quantity: 3 cases. The .223 rounds feature 55 Grain Ballistic Silvertip Centerfire Rifle Ammunition with brass cases and boxer primers. This ammunition is non-corrosive. The .223 round offers muzzle velocity of 3240 feet per second and muzzle energy of 1282 ft lbs.
- iv. WINCHESTER REMINGTON .223 55GR FULL METAL JACKET RIFLE ROUND, cost: approximately \$459 per case of 1000, quantity: 5 cases. The Full Metal Jacket rifle round features 55 Grain full metal jacket bullets, recommended for target and range training. The .223 round offers muzzle velocity of 3240 feet per second and muzzle energy of 1282 ft lbs.

b. Purpose

To be used as precision weapons to address a threat with more precision and/or greater distances than a handgun, if present and feasible.

c. Authorized Use

Members who have received in-house / POST training from certified POST range instructors.

d. Lifespan

- i Smith & Wesson M&P15 Patrol Rifle- approximately 15-20 years.
- ii Colt M4 Comando Semi-Auto Rifle- approximately 15-20 years.
- iii Winchester Ranger .223 Ballistic Silvertip Rifle Rounds- no expiration.
- iv Winchester Remington .223 Full Metal Jacket Rifle Rounds- no expiration.

e. Fiscal Impact

Annual and ongoing maintenance cost will be estimated to be approximately \$1,000-\$1,500.

f. Training

Prior to use of the rifle, personnel will complete a 4 hour course presented by a POST approved instructor, followed by proficiency qualification. Personnel will complete annual qualification demonstrating proficient use of the rifle and policy knowledge. As courses are available, the Training Sergeant will send personnel to a supplemental POST approved 16 hour Patrol Rifle Operator course.

g. Legal and Procedural Rules

Use is established under Lexipol 306.3.6. It is the policy of the PPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force.

4. Command Post Trailer: Marked police trailer used to command sustained law enforcement incidents.

a. Description, quantity, capabilities, and purchase cost

- i. TPD 24' x 8.5' tandem 5k Axle Special Ops trailer VIN# 1T9C29028B1090003, purchase price \$50,000.

b. Purpose

To be used as a command post for sustained law enforcement incidents, including but not limited to DUI checkpoints, major collision scenes, major crime scenes, or other sustained incident where access to law enforcement computers, communication equipment and shelter is required.

c. Authorized Use

All department members upon authorization of the watch commander.

d. Lifespan

Estimated 20-25 years.

e. Fiscal Impact

Annual and ongoing maintenance cost estimated to be \$1,500.

f. Training

1 hour of in-house training regarding safe deployment and stationing of trailer.

g. Legal and Procedural Rules

Deployment of trailer is only allowed upon authorization of the watch commander.

705.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

705.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy. Law enforcement agencies responding to a call for mutual aid within this jurisdiction shall adhere to their own policies on the use of military equipment.

705.7 ANNUAL REVIEW AND REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee shall also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

The Annual Military Equipment Report will include the following information for the immediately preceding calendar year for each type of military equipment:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
5. The quantity possessed for each type of military equipment.
6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

705.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

705.9 POLICY COMPLIANCE

Government Code section 7070 requires that this policy specify the mechanisms to be used by the Department to ensure compliance with this policy. Complaints regarding violations of this policy are subject to investigation and discipline in accordance with Policy 1010, and other policies of the Department related to officer discipline.

706.9 PUBLIC COMPLAINTS, QUESTIONS, AND INVESTIGATION

Government Code section 7070 requires that this policy specify the procedures by which members of the public may register complaints, submit questions about the use of each specific type of military equipment subject to this policy, and procedures by which the Department will respond to such matters.

Pursuant to California Government Code §7070(d)(7), members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in this policy by any of the following means:

1. Via email to: police@pacificapolice.org
2. Via phone call to: (650) 738-7314
3. Via mail sent to: Pacifica Police Department
Attn: Military Equipment Use Coordinator
2075 Coast Highway
Pacifica, CA 94066

The Pacifica Police Department is committed to responding to complaints, concerns and/or questions received through any of the above methods in a timely manner. Complaints regarding violations of this policy are subject to investigation and discipline in accordance with Policy 1010, and other policies of the Department related to officer discipline.









For Signature: OrdinanceNo877-CS_PoliceMilitaryEquipPolicy-Approved

Final Audit Report

2022-05-20

Created:	2022-05-20
By:	Sarah Coffey (scoffey@pacifica.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXuorLx8bt9JKSaDZ0WMyGg2V4dAEqVK

"For Signature: OrdinanceNo877-CS_PoliceMilitaryEquipPolicy-Approved" History

-  Document created by Sarah Coffey (scoffey@pacifica.gov)
2022-05-20 - 6:19:46 PM GMT
-  Document emailed to Mary Bier (mbier@pacifica.gov) for signature
2022-05-20 - 6:20:11 PM GMT
-  Email viewed by Mary Bier (mbier@pacifica.gov)
2022-05-20 - 6:25:06 PM GMT
-  Document e-signed by Mary Bier (mbier@pacifica.gov)
Signature Date: 2022-05-20 - 6:25:49 PM GMT - Time Source: server
-  Document emailed to Sarah Coffey (scoffey@pacifica.gov) for signature
2022-05-20 - 6:25:50 PM GMT
-  Email viewed by Sarah Coffey (scoffey@pacifica.gov)
2022-05-20 - 6:29:45 PM GMT
-  Document e-signed by Sarah Coffey (scoffey@pacifica.gov)
Signature Date: 2022-05-20 - 6:29:56 PM GMT - Time Source: server
-  Agreement completed.
2022-05-20 - 6:29:56 PM GMT